

Jeremy M. Dobbins SBN 320648
The Law Office Of Jeremy M. Dobbins
1225 E. Divisadero Street
Fresno, CA, 93721
Telephone: (559) 306-6580
Facsimile: (559) 316-4070
Email: jeremy@jeremymdobbins.com

Attorney for Plaintiff's Marlea Frazer,
Estate of Harley C. Matthews Junior

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

MARLEA FRAZER, individually and as the
Successor-in-Interest to the ESTATE OF
HARLEY C. MATTHEWS JUNIOR,

Plaintiffs,

vs.

FRONTIER SENIOR LIVING, LLC, CLOVIS
SHAW ASSOCIATES, LLC,

Defendants,

) Case No.: **18CECG04357**

)

) **FIRST AMENDED COMPLAINT FOR**
) **DAMAGES**

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

TO THE HONORABLE COURT:

PARTIES

1. Plaintiff, Marlea Frazer ("Frazer") as an individual, and as successor in interest to decedent, Harley C. Matthews Junior, at all times relevant to this complaint was a citizen and resident of California, County of Madera.

1 2. Plaintiff, Estate of Harley C. Matthews Junior (“Estate”) is the representative party of the
2 survivor claims of Harley C. Matthews Junior (known and referred to hereinafter as both
3 “Matthews” and/or “Decedent”). Matthews died on 12/6/2016. Plaintiff Frazer commences this
4 action in her capacity as Successor-in-Interest to the Decedents Estate pursuant to her declaration
5 filed concurrently with the original complaint per CCP §377.32.

6 3. Defendant, Frontier Senior Living, LLC (“FSL”), is an Oregon Domestic Limited Liability
7 Company that is registered to do business in California. It is a senior housing management
8 company that is owned by Frontier Management, LLC. It is one of several companies in the chain
9 of companies that hold or manage assets of Assisted Living and Retirement Living Centers
10 including Carmel Village in Clovis, CA. FSL is one of the two licensees listed on the license
11 granted by the Department of Social Services for Facility Number 107206828 (Carmel
12 Village). Frontier Management, LLC and Gregory Roderick are the members of this LLC.

13 4. Defendant, Clovis Shaw Associates, LLC (“CSL”) a California LLC, is described as
14 “overseeing Clovis Assisted Living Facilities–One LP” on its filings with the California Secretary
15 of State. CSL is the General Partner of Clovis Assisted Living Facilities – One LP and is one
16 of the two licensees listed on the license granted by the Department of Social Services for Facility
17 Number 107206828 (Carmel Village). Gregory Roderick is the Managing Member.

18 **JURISDICTION AND VENUE**

19 5. Jurisdiction and venue are proper in the Superior Court of California for the County of
20 Fresno because, at all times relevant hereto, one or more of the defendants resided in Fresno
21 County, and the occurrences giving rise to plaintiffs’ injuries took place in Fresno County.

22 6. This is an action that exceeds the twenty-five thousand dollars (\$25,000) minimum
23 jurisdiction requirement for unlimited civil cases.

24 **FACTUAL ALLEGATIONS**

25 7. Matthews became a resident at Carmel Village, a Residential Care Facility for the Elderly
26 owned and operated by FSL and CSL (Collectively known herein as “Carmel Village”) on April 13,
27 2016, at the age of 82 years old. As a result of the terminal stages of Multiple Myeloma, Matthews
28 condition had deteriorated so much that he could no longer be safely cared for at home. This
decision was made after every effort was rendered to provide adequate care in Matthews home.
Frazer received input from a Social Work Case Manager at Saint Agnes Hospice Services who
thought assisted living would be a safer living arrangement given Matthews severe mental decline.
The Hospice Medical Director, Gregory Copeland DO in a drafted letter dated March 31, 2016,
stated that Matthews “does not have the mental capacity to make his own decisions or manage his

1 affairs due to the forgetfulness and confusion associated with being in the terminal stage of multiple
2 myeloma and renal disease.” Per this recommendation, Frazer sought to find an assisted living
3 facility.

4 8. On April 13, 2016, Carmel Village staff, Frazer, and Frazer’s daughter Rachel met to admit
5 Matthews to Carmel Village. Frazer signed the “Assisted Living Rental Agreement” as Matthews
6 was not mentally competent to sign. This agreement outlined the terms of Matthews stay at Carmel
7 Village. Frazer was listed in the agreement as the “responsible party” for Matthews. At this same
8 time Carmel Village was provided with Matthews Estate Planning documents, naming among other
9 things, Frazer as the Trustee of the Matthews Family Trust, Advance Healthcare Directive including
10 a Power of Attorney for Healthcare, a CCP §56 waiver, Durable Power of Attorney for management
11 of property, finances, and personal affairs, a Final Disposition Authorization and instructions, and a
12 copy of the March 31, 2016 letter from Dr. Copeland. All estate planning documents were executed
13 on May 21, 2014, when Matthews was still of sound mind. As of the March 31, 2016 letter drafted
14 by Dr. Copeland Frazer’s responsibilities as the Trustee and Power of Attorney over all of
15 Matthews decisions listed in Matthews Estate planning documents was fully in effect as Matthews
16 could no longer make decisions or manage his affairs on his own.

17 9. Matthews had been on hospice service with Saint Agnes Hospice Services since July 31,
18 2015. This was to continue at Carmel Village with a nurse who would visit him on-site from Saint
19 Agnes Hospice. Also, Matthews was on dialysis through Clovis Dialysis, which would continue
20 throughout his stay as a resident at Carmel Village. Matthews would be transported back and forth
21 from Carmel Village to Clovis Dialysis on Tuesday, Thursday, and Saturdays each week per the
22 assisted living rental agreement services available to Matthews per Frazer’s instruction.

23 10. Carmel Village also agreed per the Assisted Living Rental Agreement that restraints were
24 not used and were contrary to their philosophy. The agreement provided for multiple utilities
25 including basic cable television. It also provided for maintenance and repair of “your unit at our
26 expense.” It provided that “staff at the Community will observe your health status to identify your
27 dietary, social, and health care needs and will provide you with consultations regarding social and
28 health-related issues.” The agreement provided a list of “Personal Assistance and Care” assisted
living services. Several services were listed including assistance with personal activities of daily
living, eating, dressing, toileting, bathing mobility tasks (ambulating), providing hygiene items of
general use such as toilet paper, assistance with appointment scheduling for medical and dental
services, transportation to medical and dental appointments, laundry and linen changes, clean bed
and bath linens weekly or as needed, and cleaning of the resident’s room.

1 11. The agreement also specifically addresses transfers from the community. In the event that a
2 higher level of care is needed, such as skilled nursing care, a resident would have to be transferred
3 out. The agreement explicitly states that Carmel Village was not designed to provide higher levels
4 of care. The agreement points to (1) judgment of Carmel Village staff, (2) resident care needs, and
5 (3) levels of functioning that were consistent with other residents as criteria on how a transfer
6 decision is evaluated. The agreement also states that if you become a danger to yourself or others or
7 if it is inappropriate for the resident to remain in the community then Carmel Village may ask you
8 to move. If you do not move, then Carmel Village may provide one on one care to protect your and
9 others safety and health. The agreement stated that in the event that this occurred Carmel Village
would charge for this service.

10 12. The agreement also stated that Carmel Village must provide a 30-day notice when a resident
11 is evicted. The agreement also states that the tenant may terminate the agreement at any time, with
12 or without cause, with 30-day written notice. The only requirement is that the resident is
13 responsible for the monthly fee for the 30 days. Also, the agreement lists several other reasons
14 which Carmel Village may terminate the agreement. Some of those reasons are not meeting
15 retention requirements set by state law, communicable diseases, a need for 24-hour nursing care,
16 increased supervision, licensure, staffing, personal physician determination, if you are a “wandering
17 risk,” you have a Staph infection, and dependency on others to perform ADL’s beyond RCFE
18 guidelines.

19 13. The agreement states that Carmel Village is not responsible for property loss unless the loss
20 is caused by their negligence or its employees. It also states that advance arrangements for mental
21 incompetence are the residents' responsibility.

22 14. Carmel Village also includes as Appendix D to their contract of the said agreement a
23 “Statement of Residents Personal Rights.” There are several rights listed, however among those
24 rights are protection of property, the right to be accorded dignity with staff, and others; safe and
25 comfortable accommodations; to be free from corporal punishment, humiliation, intimidation,
26 mental abuse, or other actions of a punitive nature; to leave or depart the facility at any time and to
27 not be locked into any room, building, or on facility premises by day or night; to have his
28 responsible person regularly informed by the facility of activities related to his care or services
including ongoing evaluations, as appropriate to resident’s needs; to have communications to the
facility from his family and responsible persons answered promptly and appropriately; to wear his
own clothes; to receive or reject medical care, or other services; and to move from the facility.

1 15. In addition to the contract and at approximately the same time it was executed, April 13,
2 2016, was a written letter with instructions from Frazer to Carmel Village that Frazer's brothers
3 Robin Matthews (hereinafter "Robin") and Ty Matthews (hereinafter "Ty") were not under any
4 circumstances to take Matthews off of the premises. On admission, Frazer had a detailed discussion
5 with the Carmel Village Executive Director about the importance of this instruction. Frazer
6 explicitly stated that Ty and Robin could come and have breakfast, lunch, visits, phone calls, etc.
7 But they were not to leave the premises with Matthews as they would likely attempt to manipulate
8 Matthews to withdraw money from his bank account.

9 16. Frazer shared that these precautions were because the two brothers had a history of
10 attempting to manipulate their father and take possession of his assets including his house and
11 money from his bank account. Frazer was assured by the Executive Director, at contract signing,
12 that this instruction would be honored.

13 17. Contrary to their commitment to Frazer, Carmel Village allowed Robin and Ty to take
14 control of Matthews affairs. This caused Frazer to helplessly watch her elderly father being abused
15 by her brothers and Carmel Village staff financially and physically. This gave access to Robin and
16 Ty so that they were able to abuse Matthews narcotics, allow Carmel Village to mismanage
17 Matthews medications, recklessly manage Matthews care, remove Matthews from needed hospice
18 services, cause Matthews and Frazer to be physically and emotionally abused and attacked by staff,
19 and because of staff's willful and reckless disregard of Matthews well-being sped the demise of
20 Matthews.

21 18. First Carmel Village allowed Robin and Ty to take Matthews off of the premises multiple
22 times after his admission. Frazer discovered this was happening on approximately May 10, 2016.
23 She subsequently ordered Carmel Village staff to honor their agreement and not allow Ty and
24 Robin to take Matthews off of the premises again. Matthews told Frazer that Robin and Ty had
25 been trying to pressure Matthews to withdraw money from the bank.

26 19. There were subsequent verbal disagreements that day (May 10, 2016) between Frazer, her
27 two brothers, and Carmel Village. The brothers made threats to call the police and tell them that
28 Frazer was mismanaging Matthews money. Frazer made a report with Clovis police against her
brothers. Rebecca Hankey the Executive Director also made a Courtesy Complaint (Case # 16-
31308) on behalf of Carmel Village against Robin to Clovis Police. However, this seemed to be
only to show due diligence on paper. Despite purporting to be concerned that Robin and Ty were
committing abuse, Carmel Village refused to enforce the agreement to not allow the brothers to
remove Matthews from the facility. A detective from Clovis Police department was investigating

1 the matter. This investigation would eventually end when the Fresno District Attorney's office told
2 the detective that no criminal charges would be pursued since Matthews had passed away.

3 20. At some point between the admission date to Carmel Village and May 10, 2016, Robin went
4 to Citi-Bank and had Matthews sign over a financial power of attorney. He then obtained a Durable
5 Power of Attorney, brought this to Carmel Village who incorrectly accepted it as power of attorney
6 for Robin to manage all of Matthews matters. Saint Agnes Hospice also received this form dated
7 May 9, 2016, signed by Matthews and notarized. Robin also signed a sheet that informed him of his
8 duties provided as power of attorney.

9 21. Matthews was not capable of making such decisions as he no longer had a sound mind to do
10 so per Dr. Copeland's March 31st, 2016 letter referenced herein. Carmel Village had a copy of this
11 letter and Matthews Estate Planning Documents, however, ignored their purpose which was to
12 honor Matthews wishes, protect his well-being, and his assets in his time of weakness.

13 22. Carmel Village was allowing Frazer's brothers to ignore her authority, expose Matthews to
14 financial ruin, and take advantage of her father at his time of weakness. Frazer called Carmel
15 Village and told them that they were allowing Robin and Ty to kidnap Matthews. Carmel Village
16 staff responded to Frazer stating that they had no right to stop a son from taking their father and that
17 Robin now had Power of Attorney instead of Frazer.

18 23. On May 11, 2016, after multiple discussions with Carmel Village leadership due to the
19 denial of Frazer's authority (allowing Robin and Ty to take over her father's affairs), Frazer became
20 depressed, hopeless, and emotionally distressed as she had to sit by and watch her father being
21 abused. Matthews purposely designed his estate plan to protect himself in his time of weakness and
22 vulnerability. Carmel Village took no measures to enforce that plan, allowing a mentally
23 compromised man to be manipulated to sign away rights he no longer had the capacity to sign away
24 after being put on notice. Because of this depression and hopelessness, Frazer attempted suicide by
25 overdosing on Xanax and Vicodin, was found unconscious by one of her daughters, and was rushed
26 to a nearby emergency department where she was treated for an overdose.

27 24. On May 11, 2016, Frazer was evaluated by a Psychiatrist and Psychologist at Kaiser
28 Permanente. They determined that for the first time in her life she was so depressed, she had
become a danger to herself. For her safety, Frazer was placed on an involuntary psychiatric
detention under Welfare and Institutions Code 5150 while in the Kaiser Emergency Department.

25 After being medically stabilized, Frazer was then referred for inpatient psychiatric
26 hospitalization and treatment at Fremont Hospital. Frazer was then accepted and hospitalized at
27 Fremont Psychiatric Hospital from May 12, 2016, to May 14, 2016.

1 26. While hospitalized Frazer underwent psychiatric evaluation and treatment, was placed on
2 multiple anti-depressant medications, participated in intense therapy sessions, and was diagnosed
3 with Major Depressive Disorder related to the issues at Carmel Village. She was discharged back to
4 her home on May 14, 2016, with a plan to follow up on the psychiatric and psychologic treatment
measures with Kaisers outpatient behavioral health services.

5 27. While Frazer was hospitalized, Robin and Ty continued to pressure Matthews to give them
6 full control of his entire estate. On May 13, 2016, Robin had Matthews sign a new Advance
7 Directive and removed Matthews from hospice care. This again was not valid as the brothers had
8 undue influence over Matthews who was not of sound mind to execute or understand the magnitude
9 of these decisions.

10 28. On or before May 10, 2016, Carmel Village allowed Robin and Ty to usurp all authority
11 acknowledging their power of attorney obtained by undue influence over Matthews who lacked
12 capacity. When Frazer's daughters (Matthews granddaughters) would call or visit Matthews,
13 Carmel Village would notify Robin that they were calling Matthews. Robin would become
14 aggressive and have Carmel Village staff transfer him to talk to whoever was visiting Matthews.
15 Robin would often try and intimidate Matthews granddaughters and Frazer with threatening phone
16 calls and text messages. Even after her discharge from Fremont Hospital Frazer remained afraid of
17 her brothers, chiefly Robin who regularly made violent threats, and did not know how to get back in
18 control of her fathers' affairs. Frazer would call and leave anonymous messages to Matthews at
19 Carmel Village and Clovis Dialysis to attempt to keep his spirits up and let him know that his rent
would be paid despite his sons taking over his assets. Frazer wanted to take charge of Matthews
affairs but felt that Carmel Village had stripped her of all of her power to help Matthews.

20 29. The two sons were now (unlawfully) managing Matthews affairs. On June 1, 2016, they
21 removed Matthews from hospice service. On June 17, 2016, Robin informed Carmel Village that
22 Matthews hospice service would change from Saint Agnes to Hinds Hospice. However, this did not
23 happen. Saint Agnes, however, did notify Carmel Village staff that Matthews was no longer open
24 to hospice services; but that they would be coming to assess him to have hospice re-opened on
25 Monday (June 20, 2018). On Monday, June 20, 2016, Saint Agnes Hospice came and evaluated
26 Matthews for hospice services. Saint Agnes denied him hospice service because he had been on the
service for too long.

27 30. By recklessly accepting the invalid power of attorney from Robin and Ty, Carmel Village
28 enabled both sons to financially abuse Matthews. Also, both sons had a history of addiction
problems and had stolen prescription narcotics from Matthews in the past. Carmel Village put them

1 in a position to take and abuse Matthews current prescription narcotics (Norco). Again, Frazer
2 warned Carmel Village putting them on notice to not let the sons in to manipulate Matthews and
3 gave ample reasoning to support these instructions.

4 31. On June 18, 2016, when asked by Carmel Village to bring prescribed narcotic medications
5 to Matthews, Robin brought a plastic bag with 12 pills that he said were "Norco's" inside of the
6 bag. Carmel Village staff called Robin by phone and said that they needed a bottle for the Norco's
7 with a printed prescription. Robin stated that he lived in Coarsegold and did not want to drive back
8 to Carmel Village. Matthews noted that he would self-administer the purported Norco's in the
9 plastic bag. Shockingly, Carmel village nursing staff allowed him to do so despite strict regulation
10 of the administration of narcotic medication and knowledge of Matthews mental inability to make
11 such decisions.

12 32. From June 18, 2016, to June 23, 2016, there are documented attempts by Carmel Village
13 staff to get Matthews sons to bring in pain medication and the accompanying bottle with the
14 patient's name, medications name, dose, time, route, prescribing provider, and expiration date.
15 However, the medication was never brought in to Carmel Village.

16 33. On June 23, 2016, Carmel Village staff documented a discussion with Robin in which Robin
17 said that Matthews physician was supposed to fax a medication list. Carmel Village documented
18 that they would fax it to a pharmacy as soon as it was received. Interestingly, on June 25, 2016,
19 Carmel Village gave Matthews narcotic medication (hydrocodone 0.25ml after dialysis). However,
20 the list of medicines from Matthews physician did not get recorded until June 26, 2016, at 10:30
21 am. Besides, the medication was in liquid form, whereas the medication referenced up until this
22 point where "pain pills." The Carmel Village Medication Administration Record, in contrast, shows
23 that Norco (hydrocodone – APAP 10/325mg) were administered seven times from June 20, 2016 –
24 June 22, 2016, and then apparently there was a new quantity of 160 available as of 6/22/2018. This
25 was contrary to what was charted in the progress notes. Besides, there was never any liquid form of
26 hydrocodone in Matthews ordered medications.

27 34. From just after his admission date Matthews told Frazer multiple times that Carmel Village
28 staff asked him permission to borrow his medication for other residents and for authorization to
administer other residents medication to him. She was unaware at that time that this was a real
practice. However, Carmel Village progress notes indicate that Matthews claims of giving residents
each-others medications were indeed standard practice at Carmel Village.

35. There was nothing charted from June 26, 2016, to July 5, 2016, in the Carmel Village
progress notes. It is unclear when the medication was obtained from the pharmacy. However, since

1 there was a new count of drugs as of 6/22/2016 of 160 pills it may be inferred that there was an
2 order received that day or they were using other residents medications in anticipation they would
3 receive Matthews prescribed medications.

4 36. On or about July 12, 2016, Frazer attempted to call Matthews on his cellular phone. His
5 phone was disconnected because Robin and Ty had not paid his phone bill. Frazer, determined to
6 still help her father and worried something may have happened to him (she had been calling Carmel
7 Village anonymously, out of fear of Robin and Ty, to check on Matthews) decided to go to Carmel
8 Village and see her father. Frazer arrived, and Matthews grabbed her, hugging her, and while
9 crying told her that he was afraid of her brothers Robin and Ty. He said they were trying to force
10 him to sign over his assets to them. Robin and Ty went to an attorney and decided to have a new
11 Family Trust drafted with them as the Trustees. Matthews called the attorney hired by Robin and
12 Ty and told him that he wanted Frazer back in control. The attorney then canceled the transaction,
13 and the two sons who became angry stopped coming to Carmel Village.

14 37. On or about July 14, 2016, Frazer then sought assistance from Matthews Medical Oncologist
15 Ravi Rao MD who sat on the board of Pro-Hospice Services. Dr. Rao arranged for a referral to Pro-
16 Hospice to re-start hospice services, and Matthews was assigned a personal nurse who went by the
17 name of Lisa. By this time Frazer found that Matthews had lost most of his vision, his hearing
18 diminished, he was increasingly confused, socially withdrawn, was always dizzy, and more
19 susceptible to falls than ever before.

20 38. Matthews stated he was starving all of the time and that he would call several times to have
21 food brought to him as he was too weak to make it down to the cafeteria. Carmel Village staff
22 would often tell him they were going to bring food and would never show up to his room. Carmel
23 Village allowed this decline with no notification to Frazer or to recommend a higher level of care.
24 Frazer tried to intervene as much as possible at this point, but Carmel Village staff were mostly
25 unhelpful and continued to fail to communicate and involve Frazer in Matthews care.

26 39. Now that Robin and Ty had failed to secure complete control of Matthews estate they
27 stopped coming to Carmel Village and used their access to Matthews bank account to steal over
28 \$15,000.00 in cash from Matthews, transferring the money to Robins bank account and
withdrawing cash directly from Matthews account from July 15, 2016 to August 2, 2016. Frazer
was unaware of this until the bank statement cycled on August 9, 2016. The brothers who obtained
keys from Matthews also stole all of the furniture from Matthews home which was the property of
the Trust. Frazer also discovered that the brothers did not pay Matthews' cell phone bill when they
were in control and lied to Matthews. Ty told Matthews that there was fraud going on with his

1 phone, so he had to turn Matthews phone off. However, they did not get another phone for
2 Matthews.

3 40. On July 18, 2016, Frazer filed for a restraining order against both brothers who were
4 threatening towards Frazer and Matthews and who had stolen cash and personal possessions from
5 Matthews estate because Carmel Village gave them access to Matthews.

6 41. Carmel Village refused to take ownership of their actions that exposed Matthews to such
7 liability and caused such great anguish to Frazer. Carmel Village denied that they had copies of
8 estate planning documents that had been provided at the signing of the assisted living contract.
9 Frazer and her daughter Rachel brought the estate planning documents to Carmel Village a second
10 time on or about July 18, 2016.

11 42. Carmel Village staff still questioned Frazer's authority and intentions towards Matthews
12 because of the power of attorney provided by the brothers. This was even though Matthews had
13 been confused since admission to Carmel Village and staff were aware or should have been aware
14 that Matthews was not of sound mind to execute a new power of attorney or estate planning
15 documents. Carmel Village Staff documented multiple times from admission to his discharge that
16 Matthews was confused, forgetful, or not oriented to time. Also outside agencies such as Pro
17 Hospice and Clovis Dialysis also had frequent documentation in this same time period indicating
18 Matthews confusion, forgetfulness, and/or lack of orientation to current circumstances. Multiple
19 physicians also assessed Matthews before admission at Carmel Village and deemed him to be
20 confused.

21 43. On July 20, 2016, Frazer obtained written letters from Matthews Oncologist Ravi Rao MD
22 and Primary Care Physician Patrick Brauner MD. Both physicians were heavily involved in
23 Matthews care and knew of his mental incapacity and the quality and attentiveness of Frazer in
24 Matthews care. Frazer obtained these letters to help Carmel Village staff understand that she had
25 always been the person providing care and advocating for the best interests of her father, Matthews.
26 Since the brothers had disappeared after draining Matthews bank account, staff communicated with
27 Frazer again.

28 44. With Frazer now back in control she noticed that as Matthews mental and physical decline
continued, Carmel Village staff neglected their duties to provide the necessary care for Matthews.
Between July of 2016 and November of 2016, Frazer found Matthews soaked in his urine on
multiple occasions for hours and sometimes days. Frazer would often find him wearing underwear
that did not belong to him. Staff failed to ensure Matthews took his medication with Frazer finding
loose pills including narcotics and sedatives all over his room, on the floor, and in his bed sheets.

1 He was allowed to wander off the premises unattended and allowed to fall without being attended in
2 his room and other areas of Carmel Village. He was overdosed on narcotics and sedation
3 medication. Matthews consistently complained to Frazer and his granddaughters that staff pinched
4 him, confined him, and restrained him in his room as punishment. Staff refused to fix his broken
5 lock on his door to his apartment saying "oh he knows how to open it." They left him without
6 working cable television in his room. Staff came into his room in the middle of the night harassing
7 him and scaring him while Matthews was confused, making statements such as "you should not
8 allow your daughter to take you off of dialysis" or "you are going to die!" Matthews often told
9 Frazer that he was scared of the Carmel Village staff and sometimes was so depressed over the way
he was treated that he would tell Frazer that he wanted to kill himself.

10 45. One example of an episode of confinement is as follows: from July 5, 2016, to July 14,
11 2016, the Carmel Village progress note charting was focused on the fact that Matthews had "loose
12 stools" or diarrhea and was on "loose stool alert." On July 9, 2016, Carmel Village had Matthews
13 confined to his room, referred to as "Isolation." This was to last from "24 – 48 hours for
14 preventative measures." It is unclear how the staff was able to confine Matthews to his tiny
15 apartment for two days as there is nothing charted to address how that was accomplished. On July
16 11, 2018, after two days of isolation, Matthews was permitted to come out of his room and go to the
dining room as he no longer had any "loose stools" according to the Carmel Village progress notes.

17 46. On July 16, 2018, after coming back from dialysis, Matthews was found by a caregiver to be
18 profusely bleeding from his dialysis port all over his apartment including the kitchen, bedroom,
19 carpet on the floor, counter, and bathroom. It reportedly took over an hour for the bleeding to stop.
20 Carmel Village staff was aware that Matthews was taking blood-thinning medication yet failed to
21 monitor him when he returned from dialysis knowing that his port had been accessed and he was at
22 an increased risk for bleeding. Carmel Village called Pro-Hospice after they discovered Matthews
profusely bleeding. Matthews was placed on hospice service with Pro Hospice on July 14, 2018.

23 47. From July of 2016 to the end of Matthews stay at Carmel Village Frazer would complain to
24 staff at least weekly about Matthews substandard care and be given excuses such as a lack of
staffing or a complaint that caregivers were having to help more than usual to dress him.

25 48. Frazer would also regularly find Matthews private toilet stopped up and dirty. In the middle
26 of the night with no working toilet, Matthews would often have to walk to another floor to use a
27 working toilet. He would be unassisted and alone in his weakened state with only his walker to
28 support himself. Matthews reported frequently falling to Frazer and would be alone until someone
would find him down. Frazer believed that Matthews frequently fell without staff watching him.

1 On one September 17, 2016 visit, Frazer and her granddaughters went to visit Matthews and found
2 him face down with no help from Carmel Village staff. He had fallen, was down for an unknown
3 amount of time, scraped his head, and broke his glasses.

4 49. During his entire stay, these types of problems that hinged on Matthews inability to care for
5 himself were not reported to Frazer. She would find out information by her own investigating, in
6 the form of a complaint, from supportive staff in the case of dressing himself, or when Matthews
7 would call her crying and fearful in the middle of the night.

8 50. Frazer also complained to staff that her father's cysts on his peritoneal and genital areas
9 were worsening and not being treated. She felt that his dirty toilet, that he often had the wrong
10 underwear on, and that his bathroom as a whole was poorly kept with dirty towels contributed to the
11 cysts not healing. Frazer felt that Matthews worsening cysts and frequent staph infections were due
12 to this neglect in his hygiene. Frazer would often clean Matthews room, bathroom, and wash his
13 laundry because Carmel Village staff would not do it even though it was a duty that was paid for by
14 Matthews.

15 51. Matthews would also often tell Frazer that staff would ask him permission to administer
16 medication belonging to other patients because they were out of his medicine. Then they would
17 also administer other patients' medications to him. Allegedly they were the same medication and
18 same dosage, but there is no way to know what drugs were being given to Matthews or taken from
19 his own personal medicines. This is the same behavior that occurred on June 25, 2018, when
20 Matthews was medicated with medication that was not his own. Matthews in his mentally declined
21 state would agree to whatever was proposed by almost anyone including Carmel Village staff.

22 52. On November 28, 2016, there was a reported instance where Frazer found metal utensils
23 inside of the microwave in Matthews apartment, and he had burned the electrical socket. Frazer
24 notified staff and then within two days staff complained to Frazer that Matthews had "fried the
25 electrical system" for the whole floor by leaving metal parts in his microwave again. Apparently,
26 per the staff, this happened multiple times, but Frazer had been unaware of these incidents. She was
27 ordered to take electrical devices from Matthews room. Only after the financial burden of repairing
28 electrical circuitry occurred on the final episode was Frazer notified. Frazer of course complied and
removed the devices from Matthews room. This frightened Frazer, and she told staff that she was
planning on moving Matthews to Pro-Hospice inpatient services due to his mental decline.

53. On or about November 28, 2016, Lisa from Pro-Hospice came to do a weekly check on
Matthews at Carmel Village. After this visit, Lisa informed Frazer that Matthews needed a higher
level of care and was at an increased risk for falls. She said that he needed a hospital bed and

1 oxygen and that she was going to order both. Frazer then realized that Carmel Village had not been
2 able to manage Matthews care for quite some time. Frazer also suspected that they had been using
3 restraints to hold her father Matthews down on his bed and wanted Matthews moved out because of
4 the cruel treatment at Carmel Village. Matthews was often afraid and could not communicate well
5 at this point. He would only state he was scared, and that staff would pinch him. Frazer asked Lisa
6 if Matthews could move to Pro-Hospice in-patient services. The answer was yes with the only
7 stipulation that because it was in-patient hospice; Matthews could no longer receive dialysis.

8 54. Later on November 28, 2016, Frazer and one of her daughters had a family meeting with
9 Matthews who agreed that a move to Pro-Hospice was the right thing as Carmel Village had been
10 neglecting his needs for most of his residency. Frazer then notified Carmel Village that Matthews
11 would be moving. That night after Frazer left to go home, staff went to Matthews room in the
12 middle of the night and told him that if he went to Pro-Hospice, he would die, causing him to be
13 sorely afraid. Matthews called Frazer in the middle of the night crying and informed her of the
14 visit.

15 55. For the next two days, Frazer attempted to remove Matthews subtly to avoid unnecessary
16 stress and anxiety to Matthews. Frazer first spoke with an employee of Carmel Village named
17 "Ivonne" over the phone on or about November 29, 2016. Frazer informed Ivonne that she would
18 be coming to take Matthews to a higher level of care. Ivonne stated, "Ok, we'll let everyone
19 know."

20 56. Frazer also instructed Tami Ojwang, the "Executive Director" at Carmel Village, that
21 Matthews was not to go to dialysis anymore because it was too hard on him and no longer
22 beneficial as he was suffering and deteriorating from Multiple Myeloma, Squamous Cell Carcinoma
23 of the Skin, and end-stage renal disease. That dialysis was too hard on his body and that Matthews
24 would not be on dialysis when moved to Pro-Hospice.

25 57. On November 29, 2016, Frazer went to Carmel Village with the intention of removing
26 Matthews from the facility and taking him to Pro-Hospice. She first had an early morning breakfast
27 with Matthews to re-discuss the move. Matthews had decompensated so bad that every time he
28 went to take a bite of his food or tried to speak, he would fall asleep. This kept going on during the
breakfast and Frazer was shocked that no one at Carmel Village had ever notified her how bad her
father's condition had become before Lisa informed her of his status.

58. During this meeting, Matthews became afraid as a nurse from Carmel Village came up to
Frazer and Matthews and started rubbing Matthews back and neck. Frazer felt as if she was trying
to make him stay awake. She sat there uninvited and smiled at Matthews saying, "you're just tired,

1 and everyone just loves you here." Matthews became afraid, and because he was so agitated,
2 anxious, and fearful at this moment, he did not want to go with Frazer. Frazer decided it was best to
3 let him calm down and instead of taking him in his current emotional state, attempt to bring him the
4 next day.

5 59. Contrary to Frazer's direct instructions, Frazer discovered that Carmel Village staff sent
6 Matthews to dialysis treatment even after her instructions to cancel.

7 60. On the early morning of November 30, 2016, Frazer came to remove her father from Carmel
8 Village to take him to a higher level of care. As planned, she made arrangements to move him in as
9 an inpatient at Pro-Hospice.

10 61. Frazer arrived at Carmel Village at or about 06:30 AM. Frazer proceeded to Matthews
11 apartment and assisted Matthews into a wheelchair in his bedroom and then wheeled him out of the
12 door and down to the main lobby heading towards the exit. Matthews was so weak that this was a
13 slow process as Frazer physically struggled to get Matthews, who could barely move, into the
14 wheelchair.

15 62. During these events, Frazer and Matthews were approached by Michael an LVN that
16 questioned her on why she was removing her father from the facility. Frazer reiterated to him what
17 she had said multiple times to staff and staff leadership of Carmel Village over the last three days,
18 that she was moving Matthews to Pro-Hospice and had all the arrangements made.

19 63. Mike started to help Frazer but then received a call on his radio, and he said that he had to
20 take this call and would be right back. Frazer continued and took Matthews into the elevator on her
21 own. Frazer made it to the exit and was unable to open the exit door. She realized that she needed
22 to push the handicap button. As she went to do so, she saw Tammy Ojwang standing by the front
23 desk spreading her knees apart, posturing to stop Frazer physically. Frazer tried to turn the
24 wheelchair, but Tammy grabbed it and would not allow her to turn. Nurses Alice Creasy and
25 Michael the LVN came at her from another direction.

26 64. Frazer backed into some large object in the lobby and locked her knees into the wheelchair,
27 then draped her arms over her father and clasped her hands with his to protect him. Alice and Mike
28 started yanking Matthews away from Frazer. Alice and Mike pulled and jerked her arms. Staff
then surrounded Frazer and Matthews, and a struggle ensued, Carmel Village staff aggressively and
violently pushed, pulled, grabbed, and struck Frazer in an attempt to take control of Matthews and
his wheelchair.

65. Frazer pleaded with the Carmel Village staff to stop hurting her and Matthews. Never-the-
less staff continued their aggressive physical actions. Alice ordered Mike to get the kitchen staff to

1 stop Frazer from leaving. All of a sudden so many staff were on top of Frazer and Matthews, Frazer
2 lost count. Alice grabbed Frazer by her right finger and then hand and ripped her arm off of
3 Matthews which led to injuries to Frazer's person and knocking Frazer to the ground. Matthews
4 was yelling the entire time for Carmel Village staff to stop hitting him in the head. He was sensitive
5 there because he had a wound on his head from tumors that were recently removed.

6 66. Frazer recently had spinal surgery (Cervical Laminectomy), and the staff yanked and pulled
7 her neck causing her great pain and suffering. The attack on Frazer's person and the collision with
8 the floor caused her multiple injuries, aggravating existing injuries, exacerbating recent surgical
9 repairs, and causing her immediate embarrassment, fear, and shock. Matthews was also knocked in
10 the head several times and may have been knocked out of his wheelchair for a short time.

11 67. Staff then forcefully wheeled Matthews away against his and Frazer's will, hiding and
12 trapping him in the facility, out of Frazer's sight, enclosing Matthews in a room where he was not
13 permitted to leave.

14 68. During the above described struggle Frazer repeatedly pleaded with staff, telling them that
15 they had no right to do this too her, asking them why they were doing this, that she had the right to
16 remove Matthews, that she had provided them with plenty of notice even though it was not
17 necessary, and that she had power of attorney on file with Carmel Village given to them at
18 Matthews admission and a second time after Carmel Village allowed Frazer's brothers to take over
19 decision making authority over Matthews.

20 69. After the struggle, Frazer was physically forced to go to a room where she was not permitted
21 to leave. Alice Creasy denied hitting Matthews and erroneously accused Frazer of punching
22 Matthews in the head. Creasy threatened Frazer that Clovis police were called and would be
23 arresting Frazer. Clovis police were sent to Carmel Village after the on-duty Nurse made a 911 call.
24 Police interviewed all involved, including the nursing director Tammy Ojwang who stated that
25 Frazer had no authority to take Matthews and made false statements that Frazer was causing trouble
26 and had hit her father several times in the face when trying to remove him. The on-duty nurse who
27 called 911 witnessed the event and told police that Frazer did not intentionally hit her father during
28 the struggle but did see employees struggling for control of Matthews.

70. Frazer then called her daughters Heathur Frazer and Rachel Chubb on their cell phones to
come to her and assist with the situation as she was distraught. The two daughters arrived soon
after to find their mother Frazer shaken, in physical pain, and terrified. Frazer and her daughters
demanded to know where their father and grandfather, Matthews was being held. Carmel Village
staff refused to answer.

1 71. Frazer, seeing no possible way to exit waited for police to arrive in Carmel Village. After
2 the arrival of Clovis Police, Frazer was interviewed by a police officer where she explained the
3 circumstances of the altercation that just took place.

4 72. Frazer produced a copy of her Power of Attorney that was provided to Carmel Village at the
5 admission of Matthews to the facility, a second time before that when her brothers tried to assume
6 control of Matthews affairs, and now a third time to assert her authority to police.

7 73. Carmel Village staff were also interviewed by Clovis Police officer Wa Cha who was
8 assisted on scene by two other officers, Sergeant James Boldt, and Nicholas Campbell. Staff
9 members made disingenuous claims about Frazer such as, that she was striking her father and that
10 they had no record of the estate planning documents that Frazer provided twice to Carmel Village.
11 The on-call Carmel Village nurse who witnessed these events told the officer that Frazer did not
12 strike her father purposely during the struggle.

13 74. Clovis Police also ordered Carmel Village staff to produce Matthews from where he had
14 hidden. Clovis police interviewed Matthews who stated that he wanted to go with his daughter,
15 Frazer. The officer interviewing Matthews noted in his report that Matthews mental status was
16 “obviously deteriorating.”

17 75. Frazer also called Lisa the Pro-Hospice Nurse, Frazer told her what had happened who
18 replied that she was stunned of what had just occurred. After law enforcement seemed to be siding
19 with Frazer, Carmel Village staff demanded that Lisa the Pro-Hospice Nurse call them to verify that
20 arrangements had been made to place Matthews in Pro-Hospice. No consent was needed to remove
21 Matthews as Frazer had the authority to make such a decision, no permission is necessary to leave
22 an RCFE, and the Assisted Living Agreement also states that same policy. Lisa from Pro-hospice,
23 however, was more than willing to make such a call, even though Carmel Village staff had already
24 been on notice for several days. Lisa called Carmel Village and confirmed the planned admission to
25 Pro-Hospice.

26 76. After all interviews, Clovis Police determined that it was Frazer’s right to remove Matthews.
27 The officer ordered Carmel Village to release Matthews to Frazer. Frazer proceeded to take
28 Matthews to Pro-Hospice for the already planned inpatient hospice admission. Carmel Village staff
said that Frazer had to sign a document that Matthews was going to Pro-Hospice and that they could
not release Matthews medications to Frazer. Instead Alice Creasy took those medications to Pro-
Hospice.

77. After Frazer returned to clean out Matthews room, another Carmel Village Nurse came into
the room and told Frazer that she also observed the same things that Frazer noted in Matthews

1 health decline. She seemed nervous and kept looking to see if anyone was coming or listening to
2 their conversation at the door. She agreed that Matthews needed a higher level of care and that
3 Frazer was right to move him out of Carmel Village. She said that the care he needed was more
4 than Carmel Village could provide. She hugged Frazer and left the room.

5 78. With the assistance of Clovis Police, Frazer left Carmel Village with her two daughters
6 Heathur and Rachel and her father, Matthews. They transported Matthews to the Pro-Hospice
inpatient facility that day.

7 79. Matthews passed away at Pro-Hospice six days later. The attack at Carmel Village haunted
8 Matthews in his final days as he expressed fear, anxiety, shock, and anguish to Frazer.

9 80. Frazer was prescribed pain medication for her injuries after the Carmel Village attack. The
10 day Matthews passed away Frazer was so deep in sleep from the pain medication she couldn't wake
11 up when Pro-Hospice staff tried to phone her several times as her father was passing away. Frazer
12 had promised Matthews she would be there when he passed away and because she was medicated
so heavily due to her pain and suffering, she could not be present.

13 81. Frazer believes that Carmel Village failed to report or recognize the severity of Matthews
14 physical and mental decline in an attempt to keep him as a paying resident at their facility. Their
15 lack of attention and abusive behavior was a substantial factor that potentiated his demise.

16 82. The days after the events described above Frazer went home and slept most of the day. She
17 was sore all over her body and in disbelief of what transpired at Carmel Village.

18 83. The second day, things got much worse. Her neck was sore, both of her shoulders and knees
19 ached badly, swelling all over, and she had generalized body pain.

20 84. In great pain all over Frazer went to her primary care doctor. She was examined, and they
21 discovered and photographed fresh bruises all over her body. She had a full medical work-up for an
assault.

22 85. Over the next several months Frazer had numerous Doctor's visits, diagnostic tests including
23 x-rays, CT scans and MRI's, and multiple surgeries to repair her body from injuries sustained in the
attack at Carmel Village.

24 86. Frazer had injuries to both shoulders, her elbow, and both knees. Before this incident,
25 Frazer had just had surgery to her neck because of spinal stenosis of her cervical spine. Her surgery
26 was healing still when Carmel Village staff recklessly threw her to the ground.

27 87. To this day Frazer is still coping with the emotional and physical trauma that occurred
28 during her father's time at Carmel Village and the day she tried to move her father to Pro-Hospice
for comfort in his last days on earth. This was already a tough time for Frazer and her family. This

1 memory includes knowledge that the selfish acts of Carmel Village potentiated her father's demise.
2 Frazer to this day still has nightmares about Matthews treatment at Carmel Village, the abuse from
3 her brothers that was allowed and potentiated by Carmel Village, and of course the attack by
4 Carmel Village staff. Frazer has endured multiple related surgeries and been forced to rely on
5 medication to treat her pain, depression, and anxiety. Frazer has been trying to avoid an additional
6 knee surgery that is needed from the injury incurred by the attack but will likely have no choice as
her pain is severe and mobility is in poor condition.

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **Assault**

10 [All Plaintiffs v. All Defendants]

11 88. Plaintiff incorporates by this reference each and all the allegations contained in paragraphs
(1) through (87) hereof as if fully set forth herein.

12 89. Defendants' above alleged conduct resulted in Plaintiff's being subjected to an intentional
13 threat of physical force causing a reasonable apprehension to an imminent battery. Carmel Village
14 and Carmel Village Staff are responsible for this misconduct. The actions of the Defendants
15 contributed to Plaintiff's being unlawfully subjected to this unlawful behavior.

16 90. As a direct and proximate result of these Defendant's misconduct, Plaintiff was damaged as
alleged hereinabove.

17 91. The aforementioned misconduct of the individual Defendant's was intentional, willful,
18 reckless, and/or accomplished with a conscious disregard of Plaintiff's rights, thereby entitling them
19 to an award of punitive damages according to proof and as permitted by law.

20 **SECOND CAUSE OF ACTION**

21 **Battery**

22 [All Plaintiffs v All Defendants]

23 92. Plaintiff incorporates by this reference each and all the allegations contained in paragraphs
(1) through (91) hereof as if fully set forth herein.

24 93. Defendants' above alleged conduct resulted in Plaintiff's being subjected to offensive and
25 harmful contact against their will. In violation of their rights to be free from battery and physical
26 harm. Carmel Village was responsible for this misconduct of its staff. The actions of the
27 responsible individuals contributed to Plaintiff's being unlawfully battered.

28 94. As a direct and proximate result of these Defendant's misconduct, Plaintiff was damaged as
alleged hereinabove.

1 95. The aforementioned misconduct of the individual Defendant's was intentional, willful,
2 reckless, and/or accomplished with a conscious disregard of Plaintiff's rights, thereby entitling them
3 to an award of punitive damages according to proof and as permitted by law.

4 **THIRD CAUSE OF ACTION**

5 **Intentional Infliction of Emotional Distress**

6 [All Plaintiffs v. All Defendants]

7 96. Plaintiff incorporates by this reference each and all the allegations contained in paragraphs
8 (1) through (95) hereof, as if fully set forth herein.

9 97. Defendants' above alleged conduct was extreme and outrageous.

10 a. Frazer was forced to endure great pain, mental anguish, humiliation, feelings of
11 helplessness, desperation, suicidal ideations, and an actual suicide attempt. She was forced to feel
12 powerless while Defendants empowered her brothers, whom she warned were after Matthews
13 assets, stole from and threatened Frazer, her family, and Matthews. She was forced to endure her
14 father being physically, mentally, emotionally and financially abused by the actions and intentional
15 omissions of Defendants.

16 b. Frazer was forced to endure great pain, mental anguish, humiliation, feelings of
17 helplessness, and desperation. She was forced to endure a physical attack by Defendants to stopped
18 her from leaving the facility, watch her father, Matthews become terrified as he was physically
19 ripped away from his daughter, Frazer, yelling for Carmel Village staff to stop hurting them.

20 c. Matthews was forced to endure great pain, mental anguish, humiliation, feelings of
21 helplessness, and desperation. He was neglected without care or attention, without assistance in
22 toileting or bathing, left to lie in his own urine, and made to wear another person's underwear
23 aggravating cysts on his genitalia and peritoneal area. As his condition worsened until he finally
24 became almost entirely blind, deaf, and confused. In addition he was allowed to fall without being
25 attended in his room and other areas of Carmel Village, overdosed with narcotic medication,
26 allowed to be exposed to and become a victim of financial elder abuse, pinched as punishment,
27 confined and restrained to his room, refused to fix his broken lock on the door to his apartment, left
28 without working cable television in his room knowing that was the only escape he had, and coming
into his room in the middle of the night harassing and scaring him. During this time his cries for
pain, assistance, and comfort prompted no response from Defendants, who had allocated inadequate
resources to provide proper staffing to care for the Plaintiff. Accordingly, Defendants were
unwilling and unable to react to either Matthews complaints or orders for therapeutic action from

1 his attending physician or daughter, Frazer who was heavily involved in Matthews care until his
2 death on December 6, 2016.

3 d. Matthews was forced to endure great pain, mental anguish, humiliation, feelings of
4 helplessness, and desperation. He was forced to endure a physical attack by Defendants to stop him
5 from leaving the facility with his daughter to go to a higher level of care, he was forced to watch his
6 daughter, Frazer attacked, beaten, abused, terrified, and begging for Carmel Village staff to stop and
being physically ripped away from his person.

7 98. Defendants acted with reckless disregard of the probability that Plaintiffs would suffer
8 severe emotional distress, knowing that Plaintiffs were present and forced to endure and witness
9 each other experience the alleged conduct as it occurred. Plaintiff's both suffered severe emotional
10 distress. The actions of all Defendants and their staff were each a substantial factor in causing
Plaintiff's severe emotional distress.

11 99. As a direct and proximate result of these Defendant's misconduct, Plaintiffs were damaged
12 as alleged hereinabove.

13 100. The aforementioned misconduct of the individual Defendant's was extreme, outrageous,
14 intentional, willful, reckless, and/or accomplished with a conscious disregard of Plaintiff's rights,
15 thereby entitling them to an award of punitive damages according to proof and as permitted by law.

16 **FOURTH CAUSE OF ACTION**

17 **Elder Abuse – Tort per Se (Pen C § 368)**

18 [Estate v. All Defendants]

19 101. Plaintiff incorporates by this reference each and all the allegations contained in paragraphs
20 (1) through (100) hereof, as if fully set forth herein.

21 102. In doing the acts and omissions alleged herein, Carmel Village and their staff, and each of
22 them, committed "neglect" as defined in Welfare and Institutions Code §15610.57(a)(b), and were
23 guilty of "recklessness," "malice," "fraud," and "oppression" within the meaning of Welfare and
Institutions Code §15657.

24 103. The conduct identified in the foregoing paragraphs created circumstances or conditions
25 likely to produce great bodily harm or death, and the said Defendants willfully caused or permitted
26 decedent to suffer or inflicted upon him unjustifiable pain or mental anguish within the meaning of
Pen C § 368(b).

27 104. The conduct identified in the foregoing paragraphs created circumstances or conditions in
28 which Plaintiff was falsely imprisoned, and the said Defendants willfully caused or permitted

1 decedent to suffer or inflicted upon him unjustifiable pain or mental anguish within the meaning of
2 Pen C § 368(f).

3 105. As a direct and proximate result of the acts and omissions alleged herein, Matthews suffered
4 damages, including pain and suffering.

5 106. Plaintiff is entitled to recover damages for Matthews' pain and suffering pursuant to Welfare
and Institutions Code §15657(b).

6 107. As a legal result of the acts and omissions alleged herein, the Plaintiff is entitled to an award
7 of reasonable attorney fees pursuant to Welfare and Institutions Code §15657(a).

8 108. By reason of the foregoing, defendants Carmel Village and Carmel Village Staff and each of
9 them, have acted with malice, fraud, and oppression as defined in Civil Code §3294.

10 109. As a legal result of the recklessness, malice, fraud, and oppression herein alleged, Plaintiff is
11 entitled, in addition to special and general damages, to an award of punitive damages pursuant to
Civil Code §3294 and to treble damages and punitive damages pursuant to Civil Code §3345.

12 **FIFTH CAUSE OF ACTION**

13 **Negligence / Willful & Reckless Misconduct**

14 [All Plaintiffs v. All Defendants]

15 110. Plaintiff incorporates by this reference each and all the allegations contained in paragraphs
16 (1) through (109) hereof, as if fully set forth herein.

17 111. At all times mentioned, Defendants and each of them knew that their failure to meet the
18 standard of care with respect to the care and treatment of Decedent would, given his physical and
19 mental condition and the high degree of his dependence on Defendants, posed the high probability
20 that he would sustain serious physical and mental injuries and Defendants knowingly disregarded
this risk.

21 112. Despite the aforesaid duty and knowledge, within the time period of Matthews stay at
22 Carmel Village, Defendants and each of them breached that duty, consciously disregarded their duty
23 to provide care that met the legal standards for such care and failed to provide such care; and also
24 consciously disregarded their duty to uphold patient and responsible party rights under assisted
25 living/RCFE guidelines, thereby subjecting Plaintiffs to the probability of serious injury. In
particular and without limiting the generality of the foregoing, said Defendants failed to:

26 a. Provide adequate assistance with mobility, both in and out of bed so that Decedent fell
27 several times harming himself

28 b. Provide Decedent adequate assistance with hygiene, so that he was filthy often without
bedsheet changes, bathroom cleaning, clean laundry, or even being provided with his own laundry,

1 as he was carelessly dressed in someone else's underwear on multiple occasions such that multiple
2 cysts persisted all over his genitals and peritoneal area.

3 c. Provide Decedent adequate monitoring after dialysis as he would often be tired and
4 susceptible to falls and increased bleeding if the dressing came loose. The Decedent was on blood
5 thinning medication which made falls and open wound sites after dialysis procedures higher risk for
him than a regular person.

6 d. Provide contracted services such as cable television, a functioning lock on the door to
7 decedents apartment that would get stuck and was unable to be opened,

8 e. Provide proper training to staff to assist a person who does not have mental capacity such as
9 the decedent. The Decedent was often confused, forgetful and unable to manage his affairs.

10 f. Provide proper administration, dispensary, and custody of medications including narcotics.
11 Because of this decedent was overdosed with pain medications on multiple occasions, had free
12 access to narcotics provided in a plastic bag, and often left pills that were unused laying around
Plaintiffs room in his bedsheets and on the floor.

13 g. Uphold their fiduciary duty with decedent to protect him and his assets from his sons (Robin
14 and Ty) who stole thousands of dollars from Decedent because Defendant did not uphold fiduciary
15 duty to protect him, allowing sons to take control of Decedents matters against Frazer's cautionary
16 instructions at admission, as Defendants defied her authority and allowed Robin and Ty to
mismanage Decedents affairs.

17 h. Provide Matthews with the freedom to leave his room.

18 i. Honor Estate planning documents provided by Frazer that had been prepared to protect
19 Decedent in his time of weakness.

20 j. Provide Matthews and Frazer freedom to leave the facility safely without physical restraint
21 or attack.

22 113. As a direct and proximate result of their failure to provide care to Plaintiffs that met the
23 standard of care, the Defendants have acted with "neglect" as defined in Welfare and Institutions
24 Code §15657 and with "recklessness, malice, fraud, and oppression" as defined in that section, and
25 accordingly, Plaintiff's Frazer and Decedent Matthews both sustained general damages from
26 physical and emotional injuries before Decedents death, Frazer continues to suffer damages
27 including physical pain, suffering, mental anguish, shock, fright, and severe emotional distress; all
28 in a sum according to proof at trial. Defendants' conduct against decedent constitutes a violation of
Penal Code §368. By virtue of the foregoing, Defendants have acted with malice and oppression
and an assessment of punitive damages against Defendants, is warranted, justified, and appropriate.

1 **SIXTH CAUSE OF ACTION**

2 **Unfair Business Practice (BUS & PC §§17200-17210)**

3 [All Plaintiffs v. All Defendants]

4 114. Plaintiff incorporates by this reference each and all the allegations contained in paragraphs
5 (1) through (113) hereof, as if fully set forth herein.

6 115. Business and Professions Code §§17200–17210, the Unfair Competition Law (UCL),
7 defines unfair competition to include any unlawful, unfair, or fraudulent business act or practice.
8 The UCL authorizes any person who was injured by such unlawful, unfair, or fraudulent business
9 acts to bring an action for relief under the statute acting in the interests of the general public. The
10 UCL also provides that a court may enjoin acts of unfair competition and order restitution to
11 affected members of the public.

12 116. The business acts and practices of Defendants as described above constitute unlawful
13 business practices in violation of the UCL in that Defendants have violated numerous provisions of
14 California law, as set forth above.

15 117. The business acts and practices of Defendants as alleged above also constitute unfair
16 business practices in violation of the UCL in that the acts and practices of Defendants challenged
17 herein offend public policy and are substantially injurious to consumers. Said acts and practices
18 have no utility that outweighs the substantial harm to consumers.

19 118. The business acts and practices of the Defendants as alleged above also constitute fraudulent
20 business practices in that said acts and practices are likely to deceive members of the public as to
21 their legal rights and obligations.

22 119. The unlawful, unfair, and fraudulent business acts and practices of Defendants described
23 herein will persist and/or recur unless and until an injunction is issued by this court.

24 120. As a direct and proximate result of the acts and practices described herein, the Defendants
25 have received and collected substantial monies from affected members of the public that they are
26 not entitled to. Such funds properly belong to the affected members of the public, including the
27 members of the proposed class in this action, and constitute ill-gotten gains subject to an order of
28 restitution and/or disgorgement.

1 121. Pursuant to Business and Professions Code §17203, Plaintiffs seek an injunction against
2 Defendants enjoining them from engaging in the unlawful acts and practices alleged herein.
3 Plaintiffs also seek an order requiring Defendants to disgorge all ill-gotten gains and to provide
4 appropriate restitution to all affected members of the public. In addition, pursuant to Code of Civil
5 Procedure §1021.5, and/or any other applicable provision of law, Plaintiff seeks attorneys' fees,
6 costs, and expenses incurred in the filing and prosecution of this action.

7 **SEVENTH CAUSE OF ACTION**

8 **Intentional Misrepresentation (Fraud)**

9 [All Plaintiffs v. All Defendants]

10 122. Plaintiff incorporates by this reference each and all of the allegations contained in
11 paragraphs (1) through (121) hereof, as if fully set forth herein.

12 123. When Decedent was admitted to Carmel Village, Defendants, through their executive
13 director who was assigned to conduct intake interviews with prospective patients and their families,
14 represented orally and in writing to Plaintiff Frazer that during Decedents stay Defendants would be
15 alert to Decedents assisted living requirements and that he would be provided with care and
16 attention that met legal standards, and suggested as fact that he would be properly cared for. The
17 person who made such representations was Rebecca Hankey at the time, who was charged with
18 "patient intake" duties, who signed the Assisted Living Agreement.

19 124. These representations and suggestions were false, and known to be false when made, and
20 made without a reasonable basis for believing it to be true. The true facts are as alleged.

21 125. These representations and suggestions were made for the purpose of inducing Decedent to
22 become a resident patient at Carmel Village so that Carmel Village could earn fees paid by or on
23 behalf of Decedent for his care that purportedly complied with the legal standards therein.

24 126. Plaintiffs relied on these representations on the assumption that they were true and,
25 accordingly, Decedent became a resident patient at Carmel Village, to his detriment.

26 127. As a direct and proximate result of the representation as alleged, Decedent was damaged as
27 alleged.
28

1 128. By virtue of the foregoing, Defendants have acted with malice, fraud, and oppression, and
2 an award of punitive damages in a sum according to proof at trial is justified, warranted, and
3 appropriate.

4 **EIGHTH CAUSE OF ACTION**

5 **Constructive Fraud (Misrepresentation) & Breach of Fiduciary Duty**

6 [All Plaintiffs v. All Defendants]

7 129. Plaintiff incorporates by this reference each and all the allegations contained in paragraphs
8 (1) through (128) hereof, as if fully set forth herein.

9 130. At all times relevant to this action, there existed between Plaintiffs and Defendants, and each
10 of them, a fiduciary and/or confidential relationship upon which Plaintiffs justifiably relied to their
11 detriment. By virtue of the relationship between Plaintiffs and Defendants, and each of them, a
12 fiduciary duty existed. Pursuant to said duty, Defendants, and each of them, owed the utmost good
13 faith and fairness to Plaintiffs in all matters pertaining to Defendants' conduct with respect to
14 Plaintiff's real and personal property.

15 131. Defendants, and each of them, accepted the reliance of Plaintiffs on the fiduciary and/or
16 confidential relationship.

17 132. Defendants, and each of them, breached the aforesaid duty as alleged herein, and in so doing
18 gained an advantage over Plaintiff in matters relating to the management and control of Decedent's
19 assets allowing Decedents sons to take him off the premises, manipulate, and force Decedent to sign
20 over assets including cash. In particular and without limiting the generality of the foregoing, in
21 breaching said duties as alleged herein, Defendants, and each of them, are required to disgorge any
22 and all profits and/or cover all losses incurred by Plaintiff because of Defendants breach of their
23 duties, and Plaintiff is entitled to an award in the amount of these profits, losses, and interest on all
24 such sums from the date of injury.

25 **NINTH CAUSE OF ACTION**

26 **Negligent Infliction of Emotional Distress**

27 [All Plaintiffs v. All Defendants]

28 133. Plaintiff incorporates by this reference each and all the allegations contained in paragraphs
(1) through (132) hereof, as if fully set forth herein.

134. During a period of approximately 7 ½ months in duration from April 13, 2016, to November
30, 2018, immediately preceding Decedents death on December 6, 2016, at Pro-Hospice,

1 Defendants and each of them engaged in the conduct as alleged, with the result that Decedent's
2 health noticeably deteriorated. In addition, Decedents assets were stolen from him. In particular,
3 and without limiting the generality of the foregoing, Decedent Matthews:

- 4 a. Became increasingly exhausted to the point of no strength to ambulate;
- 5 b. Appeared skeletal and frail, as he was malnourished;
- 6 c. Developed worse than ever cysts all over his genitals and armpits for lack of hygiene care
7 and placement in underwear that were not his own;
- 8 d. Allowed to fall several times injuring his head, face, arms, and general scrapes and scratches
9 all over his body;
- 10 e. Subjected to his sons (Robin & Ty) who were explicitly not authorized on admission to take
11 control of Decedent healthcare decisions, to neglect Decedent's care;
- 12 f. Subjected to his sons (Robin & Ty) who were explicitly not authorized on admission to take
13 control of Decedent healthcare decisions, to cancel Decedent's hospice care despite having no
14 Healthcare Power of Attorney;
- 15 g. Had increased hearing loss to the point of virtual deafness;
- 16 h. Had increased vision loss to the point of virtual blindness; and
- 17 i. Experienced great physical and emotional pain, discomfort, sadness, and depression.
- 18 j. Subjected to his sons (Ty & Robin) who were explicitly not authorized on admission to take
19 Decedent off property, to take him and manipulate and force Decedent, who in a mentally
20 compromised state was unable to comprehend that his bank accounts and other assets were being
21 stolen from him;
- 22 k. Allowed his sons (Robin & Ty) to intimidate his granddaughters who were visitors to not
23 visit Decedent causing further depression.

24 135. Plaintiff Frazer complained to responsible employees of Carmel Village, including Carmel
25 Villages Executive Director, as well as Charge Nurses, Registered Nurses, Licensed Vocational
26 Nurses, and Caregivers to which Decedents care had been delegated. In each case, Frazer was
27 given excuses such as there was a lack of staffing, someone will be notified, and other various
28 excuses. As far as the financial and healthcare control, Carmel Village told Frazer that the sons
furnished new Power of Attorney forms that over-rode her own, which was impossible in Decedents
mentally declined state.

136. During this same time period stated above Frazer was forced to stand by and watch as her
brothers stole from her father, took control of his healthcare decisions, stole his narcotics, and
caused Decedent mental anguish and depression. She attempted to intervene, as she had the right to

1 do so, but Carmel Village would not honor her authority. This sent Frazer into a deep depression
2 causing a suicide attempt and inpatient admission to a Psychiatric Hospital.

3 137. On Decedents last day at Carmel Village, Decedent and Plaintiff Frazer were attacked
4 physically by Carmel Village staff. Decedent was forced to watch Plaintiff Frazer, his daughter,
5 physically harmed and confined against her will. Frazer was forced to watch her father, Decedent
6 confined and stolen away from her and held against his will, when they tried to leave the facility to
take Decedent to Pro-Hospice.

7 138. The conduct of the Defendants, and each of them, as alleged, caused Plaintiff's Frazer and
8 Decedent to sustain severe emotional injury, and severe physical and mental pain and suffering, to
9 their damage in a sum according to proof at trial.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiffs Marlea Frazer and the Estate of Harley C. Matthews Junior prays for a
12 judgment against all named defendants: Frontier Senior Living LLC, and Clovis Shaw Associates,
13 LLC, each as follows:

14 AS TO EACH CAUSE OF ACTION AS FOLLOWS:

15 **On the First through Third cause of action (Assault, Battery, IIED)**

- 16 1. For general damages against each defendant according to proof;
17 2. For special damages against each defendant according to proof;
18 3. For punitive and exemplary damages in an amount appropriate to punish and to deter others
19 from engaging in similar misconduct; against each individual defendant;

20 **On the Fourth cause of action (Elder Abuse)**

- 21 1. For general damages against each defendant according to proof;
22 2. For special damages against each defendant according to proof;
23 3. For punitive and exemplary damages in an amount appropriate to punish and to deter others
24 from engaging in similar misconduct; against each individual defendant;
25 4. For statutory damages Per Welfare and Institutions Code §15657.5(b)(c) against each
26 defendant according to proof;
27 5. For punitive damages under Civil Code §3294 and treble damages and treble punitive
28 damages pursuant to Civil Code §3345;
6. For an award attorney's fees pursuant to Welfare and Institutions Code §15657.5(a), and as
otherwise authorized by law;

1 **On the Fifth, Seventh, Eighth, and Ninth causes of action (Negligence/Willful &**
2 **Reckless Misconduct, Fraud, Constructive Fraud/Breach of Fiduciary Duty, NIED)**

- 3 1. For general damages against each defendant according to proof;
4 2. For special damages against each defendant according to proof;
5 3. For punitive and exemplary damages in an amount appropriate to punish and to deter others
6 from engaging in similar misconduct; against each individual defendant;
7 4. For Costs of suit and Attorney's fees;

8 **On the Sixth cause of action (Unfair Business Practices)**

- 9 1. Injunctive relief according to §17203
10 2. For Costs of suit and Attorney's fees;
11 3. Any relief according to CCP § 1021.5

12 **For all Causes of Action:**

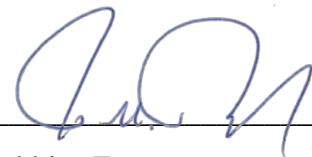
- 13 1. For any and all other relief, the Court deems just and proper.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs MARLEA FRAZER and the ESTATE OF HARLEY C. MATTHEWS JUNIOR demand a
16 jury trial in this action on all claims so triable.

17 Dated this 2nd of April 2019.

THE LAW OFFICE OF JEREMY M. DOBBINS

19 
20 _____

21 Jeremy M. Dobbins Esq.
22 Attorney for Plaintiff's MARLEA FRAZER AND
23 THE ESTATE OF HARLEY C. MATTHEWS
24 JUNIOR
25
26
27
28